

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking Regarding
Broadband Infrastructure Deployment and to
Support Service Providers in the State of
California.

Rulemaking 20-09-001

**REPLY COMMENTS OF THE
CALIFORNIA CABLE AND TELECOMMUNICATIONS ASSOCIATION**

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The California Cable and Telecommunications Association (“CCTA”) submits these reply comments to the California Public Utilities Commission (“CPUC” or “Commission”) in response to the opening comments filed September 3, 2021 on the *Assigned Commissioner’s Ruling* dated August 6, 2021 (“Ruling”). These reply comments are timely filed pursuant to the Administrative Law Judge (“ALJ”) email ruling dated August 20, 2021, which extended the deadline for reply comments to September 21, 2021.

I. INTRODUCTION

CCTA is pleased to see that the opening comments include specific and pragmatic recommendations to the Commission with the goal of ensuring success of California’s \$3.25 billion investment in a statewide open access middle-mile network (“Middle-Mile Network”) as authorized by Senate Bill (“SB”) 156.¹ Overall, the opening comments reveal widespread agreement on several key principles that should guide the Commission in its duty to provide a staff report to the Office of Broadband and Digital Literacy (“Office”) recommending potential locations for the Middle-Mile Network. These key principles include a “worst first” strategy to

¹ SB 156 (Ch. 112, Stats of 2021), which took effect on July 20, 2021 as an urgency measure.

prioritize middle-mile routes that will enable last-mile connection of California’s *hardest-to-reach unserved households*. In addition, the comments generally recognize that the cost to deploy infrastructure in these hardest-to-reach unserved areas will be high with many unexpected challenges. Accordingly, the primary focus should be to ensure that the funding is used first to connect California’s remote unserved areas that have no service or very slow service to eliminate the digital divide in California.

II. DISCUSSION

A. The top priority for the Middle-Mile Network is to first connect California’s hardest-to-reach unserved households.

The opening comments reflect broad agreement that the Commission’s top priority should be to recommend potential Middle-Mile Network locations that will enable last-mile connection of California’s hardest-to-reach unserved households. This priority is expressed as the “worst first” strategy² and the need to first connect areas with no service or very slow service, consistent with the 25/3 Mbps unserved standard codified in SB 156.³ CCTA agrees with the California Emerging Technology Fund (“CETF”) that “the overriding criteria for prioritizing State investments in government-owned middle-mile networks are to deploy last-mile infrastructure to the hardest-to-reach unserved households.”⁴ Indeed, SB 156 requires unserved households to be prioritized, as compared to duplicating existing middle mile networks in urban areas where consumers are already served.

B. The Commission should focus on the areas that have been identified as unserved and without any commercial supply of middle-mile.

² Comments of Charter at 2; Comments of CCTA at 2.

³ Comments of CforAT at 2; Comments of Southern California Edison at 3; Comments of Greenlining at 3 to 4; Comments of TURN at 17; Comments of Comcast at 4; Comments of Frontier at 5 to 6; Comments of Public Advocates Office at 3.

⁴ Comments of CETF at 9.

Several parties offered specific and practical suggestions for matching Middle-Mile Network locations with last-mile projects in remote, hardest-to-reach unserved communities. These include routes for communities that have previously been identified as unserved and lacking middle-mile facilities. For example:

- The Yurok Tribe identifies three specific routes for the Middle-Mile Network that are not included in Attachment 1 of the Ruling, and indicates that each route “would enable last mile connections to residences unserved by 25/3 Mbps.”⁵
- Mono County identifies specific routes for extending laterals off the existing “Digital 395” open access middle-mile network.⁶
- Frontier, based on its history of providing service in remote rural northern California and participating in the California Advanced Services Fund (“CASF”) and Rural Development Opportunities Fund (“RDOF”) programs, proposes specific routes for middle-mile deployment that will enable connecting unserved communities.⁷

These recommendations appear to identify projects with high value, short-term positive impact, and likely to help close the digital divide in California. Accordingly, CCTA urges the Commission to strongly consider these and other specific recommended locations in the hardest-to-reach remote rural areas that, if verified as still unserved, present great potential as Middle-Mile Network locations for inclusion in the staff report.

These specific proposals to connect unserved communities without any middle-mile infrastructure stand in stark contrast to recommendations of some parties that seek additional Middle-Mile Network routes in dense urban areas that already have ubiquitous broadband availability and existing access to commercially-available middle-mile infrastructure. For example, the Committee for Greater Los Angeles (“CGLA”) proposes to add even more middle-mile routes along the Interstate 110 corridor near downtown Los Angeles, despite the existence

⁵ Comments of Yurok Tribe at 4.

⁶ Comments of Mono County at 4.

⁷ Comments of Frontier at 8.

of 99%+ high-speed broadband availability in the communities along those proposed routes, in many cases by multiple providers, and numerous commercially available routes in the area.⁸ Further, neither CGLA, nor any other party, explains how duplicative middle-mile facilities in these urban areas would increase last-mile connections. As required by SB 156, the Commission should focus on recommending potential Middle-Mile Network routes that will connect unserved communities and facilitate last-mile deployment.

C. The Commission should consider all approved CASF and RDOF projects and act on pending CASF applications.

CCTA generally agrees with the opening comments that urge the Commission to consider pending and approved state and federal broadband grants when identifying potential locations for the Middle-Mile Network.

First, the Commission should *not* recommend in its staff report middle-mile routes to any location that will become served by an already awarded grant from the CASF, RDOF or other public funding program. The Commission should consider both middle-mile and last-mile infrastructure that has been or soon will be built with public funds and not recommend the use of additional public funding for overbuilding.⁹ As noted by CETF, this includes all broadband infrastructure projects funded by the American Recovery and Reinvestment Act of 2009, such as the Digital 395 middle-mile network and others, which already are required to be open access.¹⁰

Second, the Commission should act expeditiously on the nearly 40 pending CASF infrastructure grant applications submitted in May 2020 and determine if proposed last-mile

⁸ See Federal Communications Commission, Fixed Broadband Deployment. <https://broadbandmap.fcc.gov/#/>. Also, CGLA makes unsubstantiated assertions that the broadband availability data is somehow inaccurate. CGLA Comments at 8. The record in this proceeding is clear that urban census block broadband availability data tends to be especially accurate given that small size of the census blocks. See Charter Comments, Exhibit A at 8 (Jul. 2, 2021).

⁹ Comments of Frontier at 2.

¹⁰ Comments of CETF at 5 to 6; Comments of County of Inyo at 1.

projects would pair up with potential Middle-Mile Network routes. These pending projects were developed to connect unserved households and demonstrate clear interest from last-mile providers that could justify Middle-Mile Network deployment if no middle-mile facilities are available or otherwise would be built if the proposed CASF project is approved.¹¹ Failing to act on these pending last-mile applications would be, as CENIC explains, a significant missed opportunity for maximizing California’s overall public investment in broadband.¹² More generally, continued delay will discourage providers from undertaking the time and expense to propose projects because of uncertainty as to whether they will receive timely agency action.

D. The Commission should recognize the challenges and expense of deploying broadband facilities in the hardest-to-reach unserved areas.

The opening comments reflect a valid concern that the costs of deploying broadband infrastructure in California’s hardest-to-reach areas are very high, and, thus, there may not be sufficient funding to deploy every proposed middle mile route. Moreover, infrastructure construction in these areas likely will face substantial, unanticipated challenges. CCTA shares this concern and joins in cautioning the Commission to not recommend so many potential Middle-Mile Network locations that available funds would be stretched too thin to achieve the state’s goals.¹³

CENIC refers to the “many unknown challenges to be faced” in deploying middle-mile facilities, including challenges that cannot be fleshed out and addressed until middle-mile construction is coordinated with specific last-mile deployment.¹⁴ The Public Advocates Office

¹¹ Comments of CETF at 3 to 4.

¹² *See also* Comments of US Telecom at 3 to 4 (state coordination with federal broadband funding programs needed to ensure public funds are spent efficiently and effectively to reach as many unserved communities as possible).

¹³ Comments of Frontier at 3.

¹⁴ Comments of CENIC at 3 to 4.

similarly observes that “budget constraints, in addition constraints such as difficult terrain, right-of-way issues, and unexpected events like supply chain disruptions or extreme weather could easily result in time and cost overruns.”¹⁵ Moreover, many unserved remote locations also overlap California’s highest fire danger areas, which adds even more costs and challenges.

A recent cautionary example is California’s “Digital 299” open access middle-mile project proposed to run from Redding to Eureka along State Route 299. Despite a \$47 million CASF grant,¹⁶ after a decade of planning and support from the Redwood Coast Connect Broadband Consortia,¹⁷ much support from the Commission, Legislature and community institutions,¹⁸ and the expertise of an experienced broadband provider and previous CASF grant recipient, this publicly funded open access middle-mile project was terminated due to many unforeseen challenges and cost overruns. The challenges Digital 299 faced are described in detail in the letter to the Commission terminating the CASF project.¹⁹ As described in the letter, the grant recipient requested additional funding – about twice the original grant amount — from the CASF program, but the Commission apparently did not approve this request.²⁰

¹⁵ Comments of Public Advocates Office at 2.

¹⁶ Resolution T-17548 (March 24, 2017), available at [182417667.PDF \(ca.gov\)](#).

¹⁷ <https://www.times-standard.com/2019/07/26/digital-299-broadband-project-expected-to-be-completed-in-2021>.

¹⁸ Resolution T-17548 at 11 to 13.

¹⁹ Letter from Inyo Networks to Commission (September 17, 2020), included with these reply comments as Attachment A. As referenced in CCTA comments in this proceeding filed February 22, 2021 (page 5, footnote 14), the Commission sent a copy of the Digital 299 termination letter to the CASF service list on January 28, 2021. The link to that letter appears to be no longer active or otherwise available on the Commission’s web site.

²⁰ The Digital 299 termination letter references as an attachment a separate letter dated November 12, 2019, requesting additional funding for the project and states that the Commission did not act on that request. The copy of this attachment requesting additional funds is not included with the copy of the termination letter that the Commission distributed to the CASF service list. CCTA respectfully requests that this request for additional funds be made public in order to enhance transparency and allow the Office, TPA, and all stakeholders to learn from this publicly funded open access middle-mile project.

While the demise of the Digital 299 project is “most regrettable” according to CETF,²¹ the Commission, the Office, and the TPA can learn from this example when planning the Middle-Mile Network. Similar challenges and cost overruns should be expected in the hardest-to-reach, rural areas of California,²² which must be prioritized for deployment under the “worst first” strategy required by SB 156. The Commission therefore would be wise to avoid recommending too many route locations at once. Funding should be phased so that the unknowns and cost overruns that will inevitably arise with the hardest-to-reach locations can be covered. Taking an overly aggressive approach could leave these hardest-to-reach unserved locations with insufficient funding to finish the job envisioned by SB 156.

E. The Commission should focus on issues related to providing the Office a staff report that identifies potential Middle-Mile Network locations as required by SB 156.

Finally, CCTA notes that several parties’ opening comments include unhelpful proposals addressing issues that are not relevant to the Commission’s duty to provide the Office a staff report recommending potential Middle Mile Network locations.²³ For example, several parties raise issues about broadband adoption or issues related to the duties of the Office and TPA to manage and operate the Middle-Mile Network. To comply with SB 156, the Commission should maintain its focus on issuing a staff report and avoid becoming side-tracked by issues that are out of scope and/or exceed SB 156’s directive to the Commission.²⁴

²¹ Comments of CETF at 3.

²² See Comments of California Broadband Cooperative, Inc. at 3 (describing cost overruns in construction of Digital 395 due to “unexpected and unanticipated environmental review and fees, tribal monitoring expense, and mandated rerouting for avoidance of 465 cultural sites”).

²³ Additionally, CCTA is not responding here to parties’ opening comments which address issues for which the ALJ Ruling, dated September 9, 2021, solicit comment. As appropriate, CCTA will address those issues in comments and reply comments on that ruling.

²⁴ Government Code Section 11549.54(a) provides that the Commission shall update the initial staff report. Moreover, with deadlines for encumbering federal funds, issuing an initial staff report that identifies the hardest-to-reach remote rural locations as soon as possible will help expedite overall deployment of the Middle-Mile Network and avoid delay in achieving the goals of SB 156.

III. CONCLUSION

CCTA urges the Commission, in identifying recommended locations for the Middle-Mile Network, to follow the key principles emphasized in opening comments, namely the “worst first” strategy codified in SB 156 to prioritize middle-mile routes that will enable last-mile connection of California’s *hardest-to-reach unserved households*. Broadband deployment in these mostly remote rural locations will face cost overruns and unexpected challenges, as exemplified by the CASF-funded Digital 299 middle-mile project. To ensure available funding to connect households with no service or slow service, Middle-Mile Network locations in the *hardest-to-reach unserved areas of California* must be the overriding first priority for the staff report.

Respectfully submitted,

/S/ JACQUELINE R. KINNEY

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Dated: September 21, 2021

ATTACHMENT A



September 17, 2020

Via email

Robert Osborn
Director, Communications Division
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

RE: Termination of Digital 299 Broadband Project, granted in Resolution T-17548
and a Further Request for Additional Funds filed November 12, 2019

Dear Mr. Osborn:

On March 23, 2017, the California Public Utilities Commission (CPUC) awarded Inyo Networks, Inc. (Inyo) a grant for the Digital 299 Middle Mile and Last Mile Broadband Project (Digital 299) through Resolution No. T-17548. Inyo sought this grant at the request of the Redwood Coast Connect Broadband Consortium which had designated the route as their region's highest priority in an attempt to reach 98% of households in the consortium's region, a goal AB1665 gave to the CPUC to achieve. As set forth in great detail in our pending November 12, 2019 Request for Additional Funds filed with the Communications Division Director, due to unexpected circumstances beyond the grantee's control including route changes requested by a state agency and increases in costs and labor, Inyo notified the Commission that the Digital 299 project had increased substantially in cost. Inyo requested the "rightsizing" of the CASF funds for the project, citing past Commission precedent supporting funding of exogenous costs. In the Request for Additional Funds, Inyo requested an additional amount of \$40,343,067 (69.6%) from CASF and committed itself to provide a match of \$38,022,758, an increase of \$15,098,226 from the original budget.

Today with a heavy heart, Inyo is notifying the Commission of its immediate intent to terminate the Digital 299 project due to lack of funds for the project as described in Inyo's November 12, 2019 Request for Additional Funds. One factor is that the Commission has taken no action on the pending Request for Additional Funds and Inyo can no longer sustain the project without any CASF funds granted to date. Second, Inyo's new match of over \$38 million for the current project has proven to be too heavy of a lift.

Inyo applied for a USDA ReConnect grant/loan of \$38,022,758 but there has not been any feedback from USDA to date and, frankly, the USDA application had proposed service areas for

the project that were very chopped up due to USDA program rules that allow only unserved areas. Inyo does not feel confident that this USDA ReConnect loan will be granted.

Inyo had secured its match for the initial grant. However, given the additional request, Inyo had to search for significant new funding for its new higher match. Inyo initially had lined up a significant IRU lease for dark fiber to help fund this significant match but the firm deadline the project needed to meet has now passed. The lack of Commission approval on the Request Additional Fund by May 2020 has caused the company to decline to proceed further with the proposed IRU contract. Given Inyo has spent nearly \$3.4 million of its own funds to date, Inyo cannot afford to continue the project, with no certainty of funding for the additional amount or its own additional match requirement.

No CASF funds have been withdrawn for the Digital 299 project to date. Due to its good faith effort to bring this project to completion and due to circumstances beyond Inyo's control that resulted in exogenous costs as described in detail in its November 12, 2019 Request for Additional Funds and herein, Inyo respectfully requests \$2,357,196 in CASF funding which it has expended to date, representing 69.4% of the \$3,386,776 in costs to date. Inyo will absorb the other 30.4% (\$1,029,580) of the costs.¹ Inyo recognizes that the current CASF rules do not anticipate this situation² and does not provide a clear procedural path for recoupment of good faith expenditures on a CASF project. Inyo respectfully requests that the Commission to allow this one-time reimbursement under these very unique circumstances. This situation will bring substantial funds back into the CASF account, and this will allow other worthy CASF projects to go forward, including other projects that Inyo is pursuing.

CASF Approved Budget

In the original pre-AB 1665 grant in T-17548, funding in the amount of \$46,709,036 from the California Advanced Services Fund (CASF) Infrastructure Fund was approved. The CASF grant constitutes 69.6 percent of the initial total project cost of \$69,633,568.³ Applicant Inyo Networks was to provide 30.4 percent or \$22,924,532 of the total project cost. The middle-mile project portion (which constitutes the vast majority of the project) was funded at the 70% level, and the small Lewiston last mile portion of the project is funded at the 60% level. Funds for the project were to be made available upon the completion of CEQA, as typical for CASF-funded projects.

In detail in Inyo's November 12th request which we incorporate by reference, Inyo related a number of changed conditions which were outside its control, including a request by Caltrans to not place part of the D299 path on State Route 299 which caused an move of part of the

¹ The D299 grant had a match ration of 69.6% CASF grant – 30.4% Applicant; this maintains that match.

² Section 16 of the CASF rules do not have provisions for potential reimbursement where an applicant has expended its own funds in good faith but received no CASF funds and is terminating the project for circumstances beyond its control.

³ Resolution T-17548, at p. 3. Portions of the project were disallowed in some areas of Cottonwood to Redding, and Weaverville, due to challenges, resulting in an eligible budget of \$67,073,674.

backbone onto unimproved USFS and logging roads through portions of the Shasta-Trinity and the Six Rivers National Forests. This new path added 14.2 additional miles of backbone on unimproved roads (as opposed to a highway). This change caused increases in materials, labor and construction costs. Inyo issued two sets of Solicitations (Request for Proposals) to obtain realistic and up-to-date bids.

Inyo's Request for Out-of-Pocket Expenses to Date

As an indication of Inyo's commitment to date, Inyo invested \$3,386,776 in project development (pre-award and post-award). See Attachment A for the details as of August 21, 2020.⁴ Consistent with CASF rules, Inyo has not received any CASF funds to date, and has funded every penny itself. The work on the project has been significant. Inyo accomplished these milestones to date.

Permits: Inyo substantially completed the environmental permitting process including project scoping, field surveys tribal consultation and agency consultation for CEQA and NEPA. Inyo had been preparing final reports, with targeted permit completion permits by close of January. To understand the complexity of this project, the environmental permitting process involved approximately 50 agencies.

Engineering: Inyo completed and mapped the end-to-end route design, including running line, anchor connections, and laterals. Land ownership and parcel information were inventoried. Inyo completed network design and pole line documentation of the Lewiston last mile network. Inyo completed working drawings with environmental mitigation measures incorporated.

Procurement: Inyo added a project procurement officer to our project management office for contract administration. Inyo issued Requests for Proposals for environmental consulting, electronics, nodes, cable, conduit, vaults, and underground construction (twice). These were used in budget validation.

Community Outreach: Inyo participated in various statewide broadband conferences to increase visibility of Digital 299, taking part in policy discussions and agency collaboration. Inyo also engaged in extensive local community outreach to schools, hospitals, tribal governments, and local agencies. Formal presentations at numerous conferences, economic development forums, and county/civic interest group events (California Broadband Council (CBC), California State Association of Counties (CSAC), Rural County Representatives of California (RCRC), etc. Digital 299 has a very high profile both statewide. At a federal level, Inyo met with senior staff in the US Department of Agriculture, Federal Communications Commission, and the Department of Commerce and various elected officials, thus establishing a high profile at the national level, as well.

⁴ Attachment A is a Construction in Progress Account through July 22, 2020. Categories include Payroll Allocations, Subcontractors and Equipment, Permits and Applications, Legal Fees, Grant Development, Travel Costs, and Project Management/Market Analysis/Other.

Economic Development: Inyo worked with California Center for Rural Policy, RRDEC, Rural County Representatives of California (RCRC) and others. Inyo teamed up with the Humboldt Bay Harbor District (Harbor District) to transform legacy assets through broadband availability. In addition to raising broadband awareness in the area, these efforts will help the region, and the state, to remain competitive in the global information economy.

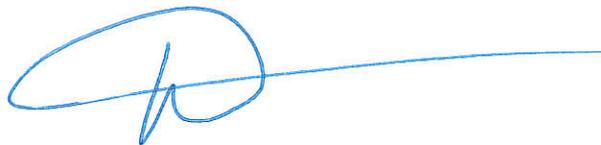
Pre-Sales and Matching Funds: Inyo reached out on a nationwide basis to a broad set of public and private sources to close funding gap. In addition to some level of success in capital markets, we have brought international players to the table to acquire dark fiber on the route. We continue meeting with state and federal agencies on relevant safety, economic development and disaster recovery programs. In April, encouraged to do so by a number of local, state and federal stakeholders, Inyo applied for federal funds under the USDA ReConnect Broadband Program, which included \$25,000,000 in grants funds and \$38,022,758 in loans. This application required the project to be sub-divided into over 39 discrete, discontinuous projects to meet the application structure of the USDA's program.

Timing Considerations

In its November 12th request, Inyo stated that project construction will take thirty (30) months once shovels are in the ground, leading to several years before network completion. Inyo requested that the Commission decide on this request for additional CASF funds by May 2020. It is now August 2020, and there is no indication that an approval will be forthcoming for the full amount of the additional request. Given the delay, Inyo has lost a key contract for an IRU for dark fiber that would have helped fund its additional match. At this point, Inyo feels it has no choice but to withdraw from the project and seek out of pocket costs that it expended in good faith in reliance on the initial grant.

Inyo makes clear that it is disappointed, because it strongly believes in the many benefits the Digital 299 project will bring to the State's commitment to close the Digital Divide and ensure that a secure, reliable communications infrastructure is deployed to one the most vulnerable parts of the state. With the wildfire threat increasing, this project would also have played a key role in advanced communications to assist in prevention, communications during a disaster, and recovery scenarios. The benefits of a successful Digital 299 is not inconsequential. We look forward to discussing this request with Communications Division leaders.

Respectfully submitted,



Nicholas Keeler
President, Inyo Networks, Inc.

cc: Michael Minkus
Louise Fischer
President Marybel Batjer
Commissioner Martha Guzman Aceves
Commissioner Clifford Rechtschaffen
Commissioner Liane Randolph
Commissioner Genevieve Shiroma

Attachment A